ARC 7956B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 36, "Film, Television, and Video Project Promotion Program," Iowa Administrative Code.

These amendments are intended to implement 2009 Iowa Acts, Senate File 480, which makes several changes to the Film, Television, and Video Project Promotion Program. These amendments:

1. Establish application deadlines. Due to numerous program changes, including a credit amount cap, notice of procedural deadlines will be clearly posted in advance.

2. Require a minimum amount of funding prior to application approval. This new requirement will delay projects that are not yet financially viable from entering the process until they are better financed.

3. Allow the Department to charge a registration fee. 2009 Iowa Acts, Senate File 480, allows the Department to charge applicants a registration fee, which will be used to support industry training, to sponsor industry events and to market the program.

4. Allow the Department to negotiate the percentage used to calculate the benefit with a producer and investor. This provision will allow the Department to negotiate a percentage which is less than the full amount possible.

5. Allow portions of compensation paid to the principal producer, principal director, and principal cast members to become eligible expenditures. Presently, the compensation paid to the principal producer, principal director, and principal cast members cannot be considered a qualified expenditure. This change will allow portions of moneys paid to the principal producer, principal director, and principal cast members to become qualified expenditures if, and only if, new spending thresholds are met.

6. Require the principal producer, principal director, and principal cast members to become Iowa taxpayers. This change applies the same criteria for becoming a qualified vendor to the principal producer, principal director, and principal cast members as are applied to other vendors.

7. Limit the qualifying amount of compensation paid to all other labor and personnel. In addition to limiting the amount of qualifying compensation for the principal producer, principal director, and principal cast members, these amendments establish limits for all other labor and personnel so that these other qualified expenditures do not exceed the qualified expenditures for the principal producer, principal director, and principal cast members.

8. Allow the Department and the Department of Revenue to establish a list of negotiable expenditure items. Presently, most spending items besides compensation paid to the principal producer, principal director, and principal cast members are qualified expenditures. This change will increase the benefit to the state by allowing some spending items to qualify if, and only if, new spending thresholds are met.

9. Remove a reference to obsolete documentation. As the program has evolved, the requirement that producers use the Department's documentation was loosened to allow producers to use their own reporting documentation if the documentation is approved in advance. This change removes a reference to the original documentation requirement.

10. Spread the vendor benefit, the income exclusion, over four years. Under the existing program, qualified vendors are allowed to exclude all qualified income from their Iowa income tax liability in the year that it is earned. The change will spread the exclusion over four years at 25 percent per year. The benefit is additive so that vendors will be able to exclude 25 percent in each year of qualified earnings.

The Iowa Economic Development Board adopted the amendments on June 18, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because 2009 Iowa Acts, Senate File 480, will become effective on July 1, 2009, and the legislative changes will apply to all projects registered on or after July 1, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments be made effective on July 1, 2009, the same time that 2009 Iowa Acts, Senate File 480, became effective. These amendments confer a benefit on the public by ensuring that the program rules are updated to reflect recent statutory changes and to allow the Department to process applications for pending projects in a timely manner.

These amendments are also published herein under Notice of Intended Action as **ARC 7955B** to allow for public comment.

These amendments became effective on July 1, 2009.

These amendments are intended to implement Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480.

The following amendments are adopted.

ITEM 1. Amend rule **261—36.2(15)**, definition of "Act," as follows:

"Act" means ~~2007 Iowa Acts, House File 892~~ Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480, that ~~authorizes~~ authorize tax credits for film, television, and video projects.

ITEM 2. Amend rule 261—36.3(15) as follows:

261—36.3(15) Request for registration of a film, television, or video project. To be eligible to receive tax credits under this program, a request for registration shall be submitted to IDED. Requests for registration of projects must be received ~~at least one week prior to the commencement of the production activities in the state~~ in accordance with deadlines posted by the department. The Iowa film office at IDED will specify the form and content of the requests, which, at a minimum, shall document that the project:

36.3(1) to **36.3(5)** No change.

36.3(6) Has commitments for at least 50 percent of the funding.

36.3(7) The department may charge a nonrefundable fee for registration of a project under the program. The fee shall be paid to the department. The amount of the fee shall equal 1/8 of 1 percent of the value of the tax credit, and 1/16 of 1 percent of the estimated credit value shall be paid upon confirmation of the project's eligibility to contract with the state under the program. The remaining balance shall be paid upon calculation of the total project qualified spending. Registration fees collected by the department under this subrule shall be used to support industry training, to sponsor industry events and to market the program. One-half of the fees collected will be used for industry training, 25 percent of the fees collected will be used to sponsor industry events and 25 percent of the fees collected will be used to market the program.

ITEM 3. Amend subrule 36.4(2) as follows:

36.4(2) Projects included on IDED's list of registered film, television, or video projects will be eligible for the tax credits authorized by the Act, determined by the department and stipulated in the project contract.

ITEM 4. Amend subrule 36.5(2) as follows:

36.5(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; terms and conditions for receipt of tax credit benefits; the amount of the tax credit and the repayment requirements or other penalties imposed in the event the recipient does not fulfill its obligations described in the contract.

ITEM 5. Amend paragraph **36.7(1)"b"** as follows:

b. The tax credit shall ~~equal~~ not exceed 25 percent of the qualified expenditures on a project. The department may negotiate the amount of the tax credit.

ITEM 6. Amend subrule 36.7(2) as follows:

36.7(2) *Qualified expenditures.*

a. A qualified expenditure by a taxpayer is a payment to an Iowa resident or an Iowa-based business for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including, but not limited to:

1. to 12. No change.

13. Labor and personnel as described in 36.7(2)*"b."* ~~"Labor and personnel" does not include the director, producers, or cast members other than extras and stand-ins.~~

14. to 26. No change.

b. Labor and personnel. For purposes of this subrule, "labor and personnel" includes the following:

(1) Compensation that is paid to the principal producer, principal director, and principal cast members is a qualified expenditure if the principal producer, principal director, or principal cast member is an Iowa resident or an Iowa-based business and if the compensation paid meets one of the following conditions:

1. If the total of qualified expenditures is at least $10 million but less than $20 million, the qualifying compensation paid to each principal producer, principal director, and principal cast member shall not exceed $250,000 each.

2. If the total of qualified expenditures is at least $20 million, the qualifying compensation paid to each principal producer, principal director, and principal cast member shall not exceed $1 million each.

(2) Compensation that is paid to personnel other than the principal producer, principal director, or principal cast members qualifies if the compensation meets one of the following conditions:

1. If the total of qualified expenditures is less than $10 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and principal cast members shall not exceed $150,000 for each detailed budget line item or for each budget accounting subcode.

2. If the total of qualified expenditures is at least $10 million but less than $20 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members shall not exceed $200,000 for each detailed budget line item or for each budget accounting subcode.

3. If the total of qualified expenditures is at least $20 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members shall not exceed $300,000 for each detailed budget line item or for each budget accounting subcode.

c. The department and the department of revenue shall establish a list of eligible expenditures and negotiable expenditures.

ITEM 7. Amend paragraph **36.7(3)"a"** as follows:

a. After ~~verifying~~ project completion and verification of the eligibility for a tax credit under this program, IDED shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer's tax return.

ITEM 8. Amend subrule 36.7(4) as follows:

36.7(4) *Approval of tax credit—reporting.* All qualified expenditures made for a registered project must be submitted ~~on Form Z, Schedule of Qualified Expenses, or~~ in a format approved by the department prior to production once the producer has completed the project. No additional claims will be accepted once the Schedule of Qualified Expenses or previously approved documentation has been received by the Iowa film office.

ITEM 9. Amend paragraph **36.8(1)"b"** as follows:

b. The tax credit shall ~~equal~~ not exceed 25 percent of the investment in the project. Under rule 261—36.8(15), an individual may claim a tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

ITEM 10. Amend paragraph **36.8(2)"a"** as follows:

a. After ~~verifying~~ project completion and verification of the eligibility for a tax credit under this program, the Iowa department of economic development shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer's tax return.

ITEM 11. Amend subrule 36.9(1) as follows:

36.9(1) For ~~tax years beginning on or after January 1, 2007,~~ the tax year in which a qualified expenditure occurred, and for the ensuing three tax years, a taxpayer may claim a reduction in adjusted gross income ~~is allowed~~ not to exceed in a tax year 25 percent of the amount of the qualified expenditure for purposes of taxes imposed in Iowa Code chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this chapter which meets the criteria of a qualified expenditure under rule 261—36.7(15).

ITEM 12. Amend **261—Chapter 36**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Code Supplement sections~~ Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.